Collaboration Requires a Heavy Lift

Deregulation calls for more, not less, cooperation between lenders and settlement partners

By Paul Clifford

It's transition time in Washington as the change in leadership in the nation's capital brings the potential for changes in regulations, particularly as they relate to housing finance. Republicans have long sought to demolish the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized the creation of the Consumer Financial Protection Bureau (CFPB). Now, with a Republican president and a Republican majority in both chambers of Congress, both Dodd-Frank and the CFPB find themselves in jeopardy. But will deregulation ease the burden of moving mortgages through to closing and beyond? Perhaps not.

Potential regulatory changes, especially in relation to operational changes brought about by the TILA-RESPA Integrated Disclosure (TRID) rule, could have significant consequences

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for the mortgage community. Even if TRID is repealed, however, the current mortgage market still requires lenders to engage in better collaboration efforts with third-party partners, like title and settlement agents.

Thus, it behooves lenders to implement strategies to improve workflow and communication with their settlement partners to achieve faster, more compliant mortgage closings — regardless of what rules are in place.

Change is coming

The future of the CFPB — and with it, the "Know Before You Owe" mortgage disclosure initiative — is uncertain. Since the passage of Dodd-Frank, however, an entire cottage industry of service and technology providers has thrived on helping lenders ensure mortgages are properly underwritten and terms are disclosed and documented in accordance with regulatory requirements. The savviest of these companies are preparing now for the potentially huge tectonic shifts that may change the landscape of loan compliance and quality control in the near future.

Will TRID tolerance thresholds on how much change is allowed between the initial Loan Estimate (LE) and final Closing Disclosure (CD) be relaxed? Will the fines the CFPB can impose when those tolerances are breached be reduced or eliminated?

No matter what changes the future holds, lenders that have invested in tools that support 21st-century collaboration with settlement agents, title insurance underwriters, county recorders and other partners in the mortgage origination process will be best positioned for success.

Why collaboration matters

Prior to TRID, responsibility for each disclosure was clearly delineated. Lenders completed the Good-Faith Estimate and Truth in Lending initial disclosures, while the HUD-1 Settlement Statement was solely in the settlement agent's wheelhouse, with minimal input required from the lender.

From the lenders' perspective, the closing table was the "finish line" of accountability. Post-closing activities, such as perfecting the loan file with the addition of the recorded security instrument and final title policy, were a secondary priority that often fell by the wayside in terms of focus and urgency.

As both lenders and settlement agents can attest, TRID made these processes more complicated and burdensome. For one thing, the tolerances that apply to each loan fee are more difficult to discern — and sometimes stricter — under TRID. Moreover, because TRID holds lenders responsible for loans for their entire life, lenders now find themselves taking responsibility for both the LE and CD as well as ensuring loan-file perfection.

These new processes have something in common: They are all significantly improved when lenders have the ability to collaborate in real time with settlement agents, title policy underwriters and other parties to the loan.

For example, the vast majority of information needed for the "Summaries of Transactions" section of the CD — taxes, insurance prorations, credits, deposits, loan payoffs, etc. — is supplied by the settlement agent. Pre-TRID, the lender was never responsible for finalizing this information. The settlement agent produced it instead, often just before closing. Now, lenders have a limited timeframe to collect this information from the settlement agent so it can be furnished to the borrower no fewer than three days prior to closing, as prescribed by TRID.

Or, consider the all-too-common scenario in which post-closing review reveals the loan file is missing the recorded security instrument and title policy. The lender must get in touch with the settlement agent and, if necessary, title insurance underwriter and county recorder's office, to secure the missing documents. This is such a time-consuming and resource-intensive process that lenders with a lot of volume often outsource this task to a third-party provider at considerable expense.

If you are thinking that all a lender needs do to accomplish these tasks is to pick up the phone or dash off an e-mail, think again. An important, yet often overlooked, component of TRID is the requirement for both lenders and third-party providers to protect consumers' sensitive data. Communicating by unsecured phone or e-mail can inadvertently expose sensitive consumer data to unauthorized access by outside parties.

Communication via phone or e-mail also raises concerns about the ability of both parties to provide a record of communication in the event of a regulatory audit. Proving the content of a conversation held verbally is next to impossible. Even if notes are taken and included in the loan file, how can regulators verify that those notes accurately reflect what was said? E-mails can be accidentally deleted, end up in spam filters, or just get lost in the shuffle. In an auditor's mind, without a verifiable audit trail, it's as if those interactions never happened.

Using e-mail or phone (not to mention snail mail) also prevents both sides from working with real-time data. What may have been true on Thursday at 4 p.m. when the information was initially communicated may not be true by Friday at 10 a.m. when it's received. Not only does this create additional complexity, but it also opens the door for additional errors and wasted effort. Ultimately, e-mail/phone collaboration is simply not collaboration. It's an inefficient process that neither lenders nor settlement agents can afford in a post-TRID environment.

Easing the burden

Fortunately, technology is now available to automate and simplify disclosure and post-closing collaboration. Collaboration portals enable lenders to share, receive and validate documents, fee data and transaction details with their network of settlement agents. Users can then share changes, updates, deficiencies and statuses within a single system, in real time.

Such systems provide lenders and settlement agents a consistent, secure, auditable means of collaboration, which helps ensure compliance while reducing errors. In addition, the platform provides both lenders and

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settlement agents with much-needed visibility into each other's processes.

In addition to facilitating digital collaboration to more effectively meet TRID requirements, collaboration platforms also offer lenders and settlement agents the ability to close the loop on real estate closings. Through these types of solutions, lenders and settlement agents can access and share post-closing information, for example, as well as communicate the status of recorded documents using a centralized portal. Extending collaboration into post-closing operations also helps ensure that the final recorded documents make their way back to the lender, thus closing out the loan file and eliminating a persistent source of frustration for both sides.

Furthermore, a collaboration platform can establish a centralized repository for all settlement-related communications and transactions, providing extra value for both disclosure creation and post-closing operations. Regulatory exams are always a matter of when, not if, they will happen, and having a comprehensive audit trail can make all the difference in ensuring a positive exam.

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Regardless of what actions the Trump administration and Republican Congress take regarding the CFPB, lenders must invest in collaboration technology to address the lingering issues that have plagued the lender-settlement relationship. By improving workflow and communication through digital collaboration, lenders can create a more seam-less, less frustrating closing environment that benefits all parties, including borrowers and mortgage originators. ■